



**Nyiva & 13 others v Insulae Africana Limited & 2 others (Cause  
969 of 2016) [2022] KEELRC 1412 (KLR) (13 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1412 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 969 OF 2016  
B ONGAYA, J  
MAY 13, 2022**

**BETWEEN**

**DIANA NYIVA ..... 1<sup>ST</sup> CLAIMANT  
MERCY MWENDE ..... 2<sup>ND</sup> CLAIMANT  
LILIAN OKEYO ..... 3<sup>RD</sup> CLAIMANT  
AMIR KHAMIS ..... 4<sup>TH</sup> CLAIMANT  
JAMES SHIKALA ..... 5<sup>TH</sup> CLAIMANT  
NICHOLAS KARISA ..... 6<sup>TH</sup> CLAIMANT  
RUTH SALLY ..... 7<sup>TH</sup> CLAIMANT  
LENNOX KAHINDI ..... 8<sup>TH</sup> CLAIMANT  
BERNARD WANYAMA ..... 9<sup>TH</sup> CLAIMANT  
ROTAN OJANGO ..... 10<sup>TH</sup> CLAIMANT  
MARY WAMBUI ..... 11<sup>TH</sup> CLAIMANT  
GEOFFREY BOSIRE ..... 12<sup>TH</sup> CLAIMANT  
FRANCIS MUTHEE ..... 13<sup>TH</sup> CLAIMANT  
KENNEDY MWANGO ..... 14<sup>TH</sup> CLAIMANT**

**AND**

**INSULAE AFRICANA LIMITED ..... 1<sup>ST</sup> RESPONDENT  
PANGONI HOTELS AND RESORT LTD ..... 2<sup>ND</sup> RESPONDENT  
PANGONI BEACH ..... 3<sup>RD</sup> RESPONDENT**



## JUDGMENT

1. The claimants filed the memorandum of claim on 22.12.2016 through Kitonga Kiiva Advocate of Kituo Cha Sheria. The claimants pleaded as follows. They were employed by the respondent on casual basis and whose particulars are known to the parties. Their respective contracts were terminated without notice and it was unfair and because their terminal dues were as well not paid at all. Each claimant prays for unpaid wages for days worked but not paid particulars of which are set out in the memorandum of claim. They prayed for judgment against the respondents for:
  - a. An order compelling the respondent to pay the claimants all their dues as calculated in the memorandum of claims and all pending statutory dues.
  - b. The respondent to issue a certificate of service to each claimant.
  - c. Damages for unfair and wrongful termination.
  - d. Costs of the suit.
2. The 2<sup>nd</sup> to 13<sup>th</sup> claimants signed authorising the 1<sup>st</sup> claimant to swear the verifying affidavit, any further affidavits and to make statements in support of the claims.
3. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents reply and defence was filed on 07.02.2017 through Kosgey & Masese Advocates. The 1<sup>st</sup> respondent admitted that it employed the claimants as casuals and they were fully paid for the periods served. The 1<sup>st</sup> respondent denied the claims and stated that the contracts were lawfully terminated and all dues to various claimants were duly paid.
4. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents pleaded that they were not party to the oral contracts of service between the 1<sup>st</sup> respondent and the claimants so that they were therefore non-suited. The 1<sup>st</sup> respondent denied the amounts of wages and claims made and that the claimants were ambiguous on the respondent they were seeking relief from. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents pleaded that they were strangers to the claims and prayers made for the claimants. The respondents prayed that the suit be dismissed with costs.
5. The respondent did not call a witness and despite opportunity, did not file final submissions. The claimants' witness was Amri Khamis (CW). The testimony was that the respondent (without being specific of which of the three respondents) employed the claimants who worked and had not been paid the terminal dues.
6. The Court has considered the pleadings, the testimony by CW and final submissions and returns that the claimants have failed to provide evidence of the days worked and not paid and the rate of daily wages as pleaded. The Court returns that the special damages as pleaded in wages allegedly not paid required strict proof but which was not provided. The respondents failed to fully participate in the hearing and did not file final submissions. Each party will therefore bear own costs of the suit.
7. In conclusion judgment is hereby entered for the respondents against the claimants for dismissal of the suit with orders each party to bear own costs of the suit.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT MOMBASA THIS FRIDAY 13<sup>TH</sup> MAY, 2022.**

**BYRAM ONGAYA**

**JUDGE**

